

UNION OF BEVERAGE INDUSTRY WORKERS,
FEDERATION OF MALAYA & ANOR

v.

SYED SHAHIR SYED MOHAMUD & ORS

HIGH COURT MALAYA, KUALA LUMPUR
RAUS SHARIF J
[ORIGINATING SUMMONS NO: R1-24-03-2005,
R1-24-04-2005 & R1-24-10-2005]
5 MAY 2005

UNINCORPORATED ASSOCIATIONS: *Societies - Disputes - Applications to declare appointments of principal officers null and void - Whether court had jurisdiction to hear - Whether applications misconceived in law - Whether 2nd plaintiff proper party - Whether applications defective - Societies Act 1966, s. 16*

The plaintiffs in these three originating summons sought declarations that the appointment of the principal officers of the Malaysian Trade Union Congress ('MTUC') for the term 2005-2007 as announced in the Triennial Delegates Conference ('TDC') was null and void. The defendants raised the following preliminary objections: (1) the court lacked jurisdiction to make the orders sought by the plaintiffs as the appropriate bodies or persons to decide the matters raised by the plaintiffs were the Registrar of Societies and the Minister by virtue of ss. 13, 13A, 14, 16 and 18 of the Societies Act 1966 ('the Act'); (2) the originating summons not being representative actions were misconceived in law; (3) the 2nd plaintiff in the respective actions were not proper parties as the actions should have been instituted against the 2nd and 3rd defendants and one Encik Zainal Rampak who were the office bearers of MTUC until the election result was announced; and (4) the prayers sought did not seek consequential reliefs and thus rendered the originating summons defective.

Held (applications dismissed):

[1] Section 16 of the Act does not oust the jurisdiction of the court. In fact there is nothing in s. 16 of the Act that states that the Registrar shall determine the dispute or adjudicate upon it. It only provides that if the Registrar is of the opinion that a dispute has occurred among members of office bearers, the Registrar may serve notice on the society requiring evidence of settlement of the dispute or institution of the proceedings for

- a* settlement of such dispute. According to s. 16(2) of the Act, if such notice is not complied with, the Registrar within one month or any extension thereof may cancel the registration of the society. As such, this court had the relevant jurisdiction. (p 887 e-f)
- b* [2] The 2nd plaintiff in the respective originating summons were delegates to TDC pursuant to r. 6(3) of MTUC's constitution. They were nominated by their respective unions to contest for the positions concerned in the election. They lost the contest. Therefore, they surely had the necessary *locus standi* to dispute the result of the election and to bring these actions against MTUC. (p 887 g)
- c* [3] Section 9(c) of the Act clearly provides that a society may be sued in the name of the public officer who has been registered as such by the Registrar and if no such person is available the society could be sued in the name of office bearers of the society. Section 2 of the Act defines the office bearers to mean the "President ... Secretary ... Treasurer of such Society". The 1st, 2nd and 3rd defendants were the current President, Secretary and Financial Secretary of MTUC respectively. Encik Zainal Rampak did not hold the position of President of MTUC when the suit was filed. Therefore, he could not be named as a defendant in this case. (p 888 b-c)
- d*
- e* [4] On the defendant's submission that the originating summons did not claim consequential reliefs and were accordingly defective, the reliefs sought by the plaintiffs were quite clear and the court had the jurisdiction to grant the said reliefs. (p 888 e)
- f* [5] There was no merit in the defendants' argument that the originating summons, not being representative actions, were defective. By not being representative actions, that did not mean that the decision of the court would only bind the parties herein. In the event the plaintiffs succeed in their originating summons, the decision of the court would bind MTUC.
- g* (p 888 f)

Case(s) referred to:

Cheah Swee Jin v. Yeoh Guan Heah [1889] 2 MLJ 56 (*refd*)

Metal Industry Employees Union v. Register of Trade Unions & Ors [1996] 1 MLJ (*refd*)

h *PV Das v. Pendaftar Pertubuhan Malaysia* [1993] 3 MLJ 741 (*refd*)

RSA Sdn Bhd v. Pekerja-Pekerja RCA & IR [1991] 1 CLJ 19; [1991] 1 CLJ (Rep) 401 SC (*refd*)

SI Rajah & Anor v. Dato' Mah Hon Kam & Ors [1993] 3 MLJ 741 (*refd*)

Yoang Jik Ping & Anor v. Gunapathy Suppiah & Ors [1995] 2 AMR 1695 (*refd*)

i

Legislation referred to:

Societies Act 1966, ss. 2, 9(c), 13(1)(iv), 13A, 14, 16(2), 18

For the plaintiffs - D Kalaimany (Zainur Zakaria with him); M/s Kalai & Partners

For the defendants - B Lobo; M/s Lobo & Assoc

Reported by Usha Thiagarajah

JUDGMENT

Raus Sharif J:

There are three saman pemula before this court:

- (i) Saman Pemula No R1-24-03-2005;
- (ii) Saman Pemula No R1-24-04-2005; and
- (iii) Saman Pemula No R1-24-10-2005;

Basically, the plaintiffs in the three saman pemula are seeking for declarations that the appointment of the principal officers of the Malaysian Trade Union Congress (MTUC) for 2005 – 2007 term as announced in the Triennial Delegates Conference (TDC) on 30 December 2004 as null and void. The reasons being that the defendants had allowed twenty seven (27) delegates purported to represent the National Union of Bank Employee (NUBE) to be present and to vote at the TDC. According to the plaintiffs, these 27 delegates of NUBE have no *locus standi* to represent the NUBE. Hence, the plaintiffs are seeking for a fresh election to be held without the presence of the 27 delegates representing the NUBE.

The defendants had in all the three saman pemula, filed summons in chambers, raising preliminary objections, complaining:

- (i) There is an absence of jurisdiction for this court to make the orders sought by the plaintiffs;
- (ii) (a) In the alternative these actions not being a representative action is misconceived in law;
- (b) That the proper parties are not before the court; and
- (iii) In the alternative that the prayer as frame in these actions cannot be granted since the prayers do not seek consequential relief.

- a* It was the submission of the defendants that if the court is with them in any of the above mentioned grounds, then the court should dismiss the action as conspicuously unmaintainable and order costs to be borne personally by the solicitors for the plaintiff.

b **Findings**

(i) Absence Of Jurisdiction

- c* It is the submission of the defendants that there is an absence of jurisdiction for this court to make orders sought by the plaintiffs. According to the defendants by virtue of s. 13(1)(iv), 13A, 14, 16 and 18 of the Societies Act 1966 (the Act) the appropriate bodies or persons to decide on the matters raised by the plaintiffs is the Registrar of Societies and the Minister. In essence the defendants contended that since the Act provides a statutory machinery to deal with the matters as raised by the plaintiffs, the plaintiffs must exhaust the remedies as under the Act before coming to this court. In support for the said proposition the defendants relied on the cases of *RSA Sdn Bhd v. Pekerja-Pekerja RCA & IR* [1991] 1 CLJ 19; [1991] 1 CLJ (Rep) 401 and *Metal Industry Employees Union v. Register of Trade Unions & Ors.* [1996] 1 MLJ. The defendants also relied on the case *S I Rajah & Anor. v. Dato' Mah Hon Kam & Ors.* [1993] 3 MLJ 741 where Lim Beng Choon J held that the court by virtue of s. 16 of the Act has no jurisdiction to grant declarations regarding the proper appointment of the lawful office bearers of a society. According to Lim Beng Choon J the proper forum to deal with the issues in that case was the Registrar of Societies.

- f* The plaintiffs in response, contended otherwise. According to the plaintiffs the sections of the Act referred to by the defendants has no relevance to the contention that there is an absence of jurisdiction of this court. The defendants further pointed out that the case of *SI Rajah* was not the only case that had decided on s. 16 of the Act but had also been considered in two other cases namely *Yoang Jik Ping & Anor v. Gunapathy s/o Suppiah & 13 Ors.* [1995] 2 AMR 1695 and *P.V. Das v. Pendaftar Pertubuhan Malaysia* [1993] 3 MLJ 741. In both cases, as submitted by the plaintiffs, the courts held that s. 16 cannot oust the jurisdiction of the court.

- g* After reading the authorities, I am more inclined to agree with the decisions in *Yoong Jih Ping* and *P.V. Das* rather than the decision in *S I Rajah*. In *Yoong Jih Ping*, Ghazali bin Mohd. Yusoff JC (as he then was) in dealing with s. 16 of the Act stated as follows:

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Looking at the ingredients of s. 16 as stated above, I cannot see how the contention that the section is mandatory section and oust the jurisdiction of the Court, can hold water. The section does not even provide that the Register shall determine the dispute or adjudicate upon it. The section merely provides that if the Register is of the opinion that a dispute has occurred as a result of which he is not satisfied of the identify of the persons who have been properly constituted as office-bearers, he way serve such notice upon the society. Upon receiving the notice, the society has to comply with it and if proceedings have been instituted, the society has to inform the Registrar. I am of the view that the 'proceedings' here would mean proceedings in court.

Mohd. Nor Abdullah J, speaking on the same subject in *P.V. Das* said as follows:

Upon a toothcomb scrutiny of s. 16 I am of the view that the registrar has no power to conduct on enquiry into the dispute. His power is to direct the society to settle the dispute. The dispute may be settled by the society and the register be furnished with evidence of the settlement or the disputes may be settle by the court by instituting legal proceedings in the court and the registrar be furnished with evidence of the institution of the proceedings.

I am of the same view. Quite clearly that s. 16 does not oust the jurisdiction of the court. In fact there is nothing in s. 16 which states that the registrar shall determine the dispute or adjuicate upon it. It only provides that if the registrar is of the opinion that a dispute has occurred among members of office bearers, the registrar may serve notice on the society requiring evidence of settlement of the dispute or institution of the proceedings for settlement of such dispute. According to s. 16(2) if such notice is not complied with, the registrar within one month or any extension thereof may cancel the registration of the society. Thus, to me, this court has the jurisdiction to grant the prayers as sought by the plaintiffs.

(ii) *Locus Standi*

The second preliminary objection raised by the defendants is related to *locus standi* of the plaintiffs. According to the defendants the 2nd plaintiff in the respective saman pemula has no *locus standi* to institute the action. With due respect I am unable to agree. Clearly the 2nd plaintiff in the respective three saman pemula were delegates to TDC pursuant to r. 6(3) of MTUC's constitution. They were nominated by their respective union to contest for the position in the election. They lost the contest. Surely they must have the necessary *locus standi* to dispute the result of the election and to bring this action against MTUC.

a (iii) Whether The Appropriate Defendants Had Been Named

The defendants contended that the action should have been instituted against the 2nd and 3rd defendants and Encik Zainal @ Jantan bin Rampak, who were the office bearer of MTUC until the election result was announced or the members of General Purpose Committee of MTUC. Again and with respect I am unable to agree. The position of the law is very clear. Section 9(c) of the Act clearly provides that a society may be sued in the name of the public officer who has been registered as such by the registrar and if no such person is available the society could be sued in the name of office bearers of the society. Section 2 of the Act defines office bearers to mean the “President ... Secretary ... Treasurer of such Society”. The 1st, 2nd & 3rd defendants are the current President, Secretary and Financial Secretary of MTUC respectively. Encik Zainal Rampak did not hold the position as President of MTUC when the suit was filed. Surely, he cannot be named as a defendant in this case. In *Cheah Swee Jin v. Yeoh Guan Heah* [1889] 2 MLJ 56, a similar argument was raised and the court held that by virtue of s. 9(c), a society may sue or be sued through the office bearers and the words office bearers as defined by s. 2 of the Act must necessarily mean the incumbent, or the present office bearers.

e (iv) No Consequential Relief

It is submitted by the defendants that the saman pemula does not claim a consequential relief and accordingly defective. To me, the reliefs sought by the plaintiffs in the saman pemula are quite clear and as I have stated earlier, this court has the jurisdiction to grant the said relief.

f (v) Representative Action

The defendants also submitted that these actions are defective since they were filed not by way of representative action. According to the defendants, by not being a representative action will mean the decision of the court will only be binding on the parties herein and in particular the plaintiffs in these action. With respect, I see no merit on the argument. In the event, the plaintiffs in the three cases are successful, the net effect would be that the court’s decision will be binding on MTUC.

For the above reasons, the defendants’ summons in chambers in the three saman pemula is dismissed with costs.

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